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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Blackwater Lodge And Training Center, Inc., A Delaware Corporation Dba Blackwater Worldwide, Plaintiff, V. Kelly Broughton, In His Capacity As Director Of The Development Services Department Of The City Of San Diego; Afsaneh Ahmadi, In Her Capacity As Chief Building Official Of The City Of San Diego; The Development Services Department Of The City Of San Diego; The City Of San Diego, A Municipal Entity; And Does 1-20, Inclusive, Defendants.	Case No. 08 Cv 0926 H (WMC) **Plaintiff's Objections To Evidence Submitted In Support Of Defendants' Response To Court's Order To Show Cause Re Preliminary Injunction** Date: June 17, 2008 Time: 10:00 A.M. Place: Courtroom Of The Honorable Marilyn L. Huff [Filed concurrently with Plaintiff's Reply to Opposition to Preliminary Injunction; Supplemental Declaration of Brian Bonfiglio; Declaration of Jennifer Chavez; and Request to file 17-Page Reply]

In support of their Response to Court's Order to Show Cause Regarding Preliminary Injunction, Defendants Kelly Broughton, Afsaneh Ahmadi, the Development Services Department of the City of San Diego, and the City of San Diego (collectively, "Defendants") ask this Court to (1) consider statements about the Navy's ship reactionary force (SRF) training program that lack foundation and are based entirely on inadmissible hearsay; (2) consider Internet news articles about the SRF training program that are themselves inadmissible hearsay; and (3) take judicial notice of a June 4, 2008 Associated Press article discussing this case that also is inadmissible hearsay. Plaintiff Blackwater Lodge and Training Center, Inc. and Blackwater Worldwide (jointly, "Blackwater") objects to this evidence.

In his declaration supporting Defendants' opposition, Julio DeGuzman purports to describe in detail the SRF training program. *See* Declaration of Julio DeGuzman filed June 9, 2008 ("DeGuzman Decl."), ¶¶16–18. However, none of DeGuzman's statements about the SRF program are based on his personal knowledge; instead, his statements appear to be based solely on "website articles" describing the program—articles that, he contends, are partly supported by other news articles available on the Navy's own website. *Id.*, ¶¶15, 19 (citing to Exhibits C and D).

Both DeGuzman's statements and the articles about the SRF program should not be considered. As a preliminary matter, the Ninth Circuit has routinely found the content of news articles to be inadmissible hearsay. *See, e.g.*, Larez v. City of Los Angeles, 946 F.2d 630, 642–43 (9th Cir. 1991). Thus, the news articles themselves (Exhibits C and D to DeGuzman's declaration) should not be considered under FRE 801 and 802. Additionally, because DeGuzman's statements about the SRF training program are based entirely on inadmissible hearsay and not on his personal knowledge, paragraphs 16–18 of his declaration should not be considered under FRE 602.

The Court should also not consider another news article—a June 6, 2008 Associated Press article entitled "Blackwater opens San Diego training center"—that Defendants attach as Exhibit 47 to their Request for Judicial Notice. Judicially noticeable facts are those that are either (1) "generally known within the territorial jurisdiction" or (2) "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." FRE 201(b). As explained above, news articles are inadmissible hearsay—making Exhibit 47 an unquestionably improper subject for judicial notice.

For the reasons set forth above, the Court should not consider (1) Paragraphs 15–19 of the June 9, 2008 Declaration of Julio DeGuzman, (2) Exhibits C and D thereto, and (3) Exhibit 47 to Defendants' Request for Judicial Notice.

DATED: June 12, 2008

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